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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,520	02/14/2001	Geraldine Lerebour	2365-28	7537
23117	7590	04/19/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			KIM, JENNIFER M	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/782,520

Applicant(s)

LEREBOUR ET AL.

Examiner

Jennifer Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-36 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 28-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-15, 17-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The response filed January 30, 2006 have been received.

Action Summary

The rejection of claims 13-15 and 17-27 under 35 U.S.C. 103(a) as being unpatentable over Wright (U.S. Patent No. 5,547,677) of record is being maintained for the reasons stated in the previous Office Action and the rejection is repeated in this Office Action for Applicants' convenience.

Response to Arguments

Applicants' arguments filed January 30, 2006 have been fully considered but they are not persuasive. Applicants argue that the present invention provides a method of preventing adhesion of microorganisms on the surface of the skin **without** the need of specific bactericidal or antimicrobial compound and the cited art requires inclusion of an antimicrobial. This not persuasive because first, Applicants claims are **not** drawn to a method of preventing adhesion of microorganisms on the surface of the skin **without** the need of specific bactericidal or antimicrobial compound, rather, it is drawn to a

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method of reducing the adhesion of microorganisms to the surface of the skin **without requiring** the presence of antibiotic, bactericidal or fungicidal agents. Applicants' claims drawn to "**without requiring**" does not exclude the presence of antibiotic, bactericidal or antifungal agent because first of all the limitation is in preamble of the claims not in the body of the claim and that the composition to be employed drawn to "comprising" does **not exclude** the antibiotic, bactericidal or antifungal agent of the prior art, rather the presence of the antibiotic, bactericidal or antifungal agents **are optional**. Thus, the claims fail to patentably distinguish over the state of the art as represented by the cited references.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 13-15 and 17-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright (U.S. Patent No. 5,547,677) of record.

Wright teaches an antimicrobial lipid-containing oil-in-water emulsion comprising **olive oil**. (abstract, column 3, lines 53-59). Wright teaches the emulsion is safe and non-toxic and can be applied to the skin. (column 1, lines 55-58). Wright teaches the emulsion can be **applied topically to skin** surface and **mucus membranes**. Wright teaches an oil-in-water emulsions have discrete droplets of oil, called the "discontinuous phase," dispersed in a "continuous phase" of water or an aqueous solvent and the discontinuous phase of Wright's emulsion binds to the **biological membrane of a pathogen and subsequently solubilizes the membrane**. Wright teaches the emulsion has antimicrobial activity against a broad spectrum of bacteria and several

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yeasts. (column 1, lines 10-16). Wright teaches the emulsion can also be used for dermatological application as a cream or gel to inactivate or prevent infection secondary to ***propionibacterium acnes*** and prevent infection by gram positive bacteria. (column 4, lines 45-58). Wright teaches the amounts of oil (olive oil) to be employed in the emulsion is 67% by weight. (column 4, lines 20-21).

Wright does not expressly illustrate the specific example of emulsion comprising olive oil and a disruption of the ecological balance among resident flora and the chemical characteristic of olive oil having a melting point of less than 35 C and having an interfacial tension of between 6 and 27 mN/m.

It would have been obvious to one of ordinary skill in the art to employ olive oil in the emulsion taught by Wright because Wright teach that olive oil is one of the useful oil in formulation antimicrobial oil-in water emulsion effective for inactive or prevent infection secondary to ***propionibacterium acnes***. Applicant's limitation of reducing the adhesion of microorganisms to the surface of the skin and/or the mucous membrane is obvious the emulsion taught by Wright bind to the biological membrane of pathogens including ***propionibacterium acnes*** and subsequently **solubilized** the membrane. Applicant's limitation of reducing a disruption of ecological balance among resident flora is obvious because the emulsion is effective as an antimicrobial including ***propionibacterium acnes***. Further, the chemical/physical characteristics of olive oil having an melting point of less than 35 C and having the specified interfacial tension can be found with the same olive oil compound and within the same amounts employed taught by Wright because the compound (olive oil) and is physical/chemical

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characteristic as inseparable. One of ordinary skill in the art would have been motivated to employ olive oil comprising emulsion in order to successfully fight and reduce any bacterial contact (adhesion) by solubilizing the bacterial membrane as taught by Wright.

For these reasons the claimed subject matter is deemed to fail to patentably distinguish over the state of the art as represented by the cited references. The claims are therefore properly rejected under 35 U.S.C. 103.

None of the claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 571-272-0628. The examiner can normally be reached on Monday through Friday 5:30 am to 2 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sreenivasan Padmanabhan
Supervisory Examiner
Art Unit 1617

Jmk
April 13, 2006